

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

FEB 22 2011

WILLIAM VICTOR,
Plaintiff

v.

SCI SMITHFIELD, et al.,
Defendants

CIVIL NO. 3:08-cv-13

(JUDGE NEALON)

(MAGISTRATE JUDGE CARLSON)

DEPUTY CLERK

MEMORANDUM and ORDER

On July 21, 2008, Plaintiff, an inmate currently confined in the State Correctional Institution ("SCI") Coal Township, initiated this civil rights action pursuant to 42 U.S.C. § 1983, naming numerous defendants. (Doc. 1). Plaintiff filed an amended complaint on September 26, 2008 alleging that on June 28, 2008 he was kicked, punched, tortured with electricity, and violently beaten by prison staff at SCI-Huntingdon resulting in a broken jaw and other injuries. (Doc. 16). Plaintiff also claimed that Defendant Dr. Ronald Long was deliberately indifferent to his medical needs. Id.

On April 28, 2010, Dr. Long filed a motion for summary judgment, brief in support, and statement of facts. (Docs. 252-53 & 255). Plaintiff filed a brief in opposition on May 7, 2010. (Doc. 263). On June 3, 2010, Dr. Long filed a reply brief (Doc. 280) to which the Plaintiff filed a motion to strike (Doc. 282) as untimely on June 10, 2010. On July 15, 2010, Magistrate Judge Martin C. Carlson filed a Report and Recommendation ("R&R") recommending that the motion for summary judgment be granted and that Plaintiff's motion to strike be denied as moot. (Doc. 294). On August 2, 2010, Plaintiff filed objections (Doc. 299)¹ to the R&R to which Dr. Long

¹The docket incorrectly attributes these objections to another R&R (Doc. 295) issued by the Magistrate Judge on July 15, 2010, but Plaintiff's objections are to the R&R (Doc. 294)

filed a reply brief (Doc. 308) on September 8, 2010. After review, the R&R will be adopted.

Discussion

When objections to a Report and Recommendation have been filed under 28 U.S.C. § 636(b)(1)(c), the district court must make a de novo review of those portions of the report to which specific objections are made. Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); Goney v. Clark, 749 F.2d 5, 6-7 (3d Cir. 1984) (“providing a complete de novo determination where only a general objection to the report is offered would undermine the efficiency the magistrate system was meant to contribute to the judicial process”); Mutombo v. Carl, 2003 U.S. Dist. LEXIS 27124 (M.D. Pa. 2003) (Kane, J.) (overruling objections that merely restated the arguments presented to the magistrate court). If no objections are made to a report, the district court is not required to review the magistrate judge’s factual or legal conclusions under a de novo or any other standard. Thomas v. Arn, 474 U.S. 140, 149 (1985). Nevertheless, the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987), writ denied 484 U.S. 837 (1987); Garcia v. I.N.S., 733 F. Supp. 1554, 1555 (M.D. Pa. 1990) (Kosik, J.) (stating “the district court need only review the record for plain error or manifest injustice”). In the absence of objections, review may properly be limited to ascertaining whether there is clear error that not only affects the rights of the plaintiff, but also seriously affects the integrity, fairness, or public reputation of judicial proceedings. Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (Vanaskie, J.). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. § 636(b)(1)(C); Local Rule 72.3.

relating to Dr. Long’s motion for summary judgment (Doc. 252). See (Doc. 299).

After a de novo review of the instant record, no error is discerned from the R&R. In the Report, Magistrate Judge Carlson discussed the legal standard for summary judgment and those governing Eighth Amendment claims for deliberate indifference to a prisoner's medical needs. (Doc. 294, pp. 9-18). The Magistrate Judge found that Plaintiff acknowledged, and the medical record established, that Dr. Long and the medical staff at SCI-Smithfield provided on-going care and treatment to Plaintiff during 2008 and that Plaintiff conceded that Dr. Long was not deliberately indifferent to his medical needs over this period of time. (Doc. 294, p. 19). As to Plaintiff's assertion that Dr. Long was deliberately indifferent to his medical needs from September 8, 2008, through September 29, 2008 at which time Dr. Long allegedly denied Plaintiff pain killers, Magistrate Judge Carlson concluded that Plaintiff does not present competent evidence to support this factual assertion. (Doc. 294, p. 20). Specifically, the Magistrate Judge determined that Plaintiff failed to present any other evidence besides inadmissible, hearsay statements made by unidentified prison personnel that Dr. Long instructed them not to provide pain medication to Plaintiff. (Doc. 294, pp. 21-22). Accordingly, Magistrate Judge Carlson recommended granting Dr. Long's motion for summary judgment. (Doc. 294, p. 20).

In his objections, Plaintiff argues that the issue is not so complex that a jury could hear his testimony and review the records and conclude that Dr. Long was deliberately indifferent to his pain. (Doc. 299, p. 3). However, Plaintiff makes the same unsupported factual allegations seen in his brief in opposition to the motion which were reviewed by the Magistrate Judge. (Doc. 299, pp. 2-3) and (Doc. 263, pp. 2-5). Because the Plaintiff makes no new specific objections to the R&R and because the Magistrate Judge correctly determined that the Plaintiff has not

presented competent evidence upon which a jury could decide in his favor, his objections will be overruled.

Finding no error in the R&R, it will be adopted. The motion for summary judgment filed by Defendant Dr. Ronald Long, (Doc. 252), will be granted and Plaintiff's motion to strike Defendant Long's untimely reply, (Doc. 282), will be dismissed as moot. This matter will be remanded to Magistrate Judge Carlson for further proceedings.

Date: February 22, 2011

A handwritten signature in black ink, appearing to read "William J. Carlson", written over a horizontal line.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM VICTOR,
Plaintiff

v.

SCI SMITHFIELD, et. al.,
Defendants

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CIVIL NO. 3:08-1374

(JUDGE NEALON)

(MAGISTRATE JUDGE CARLSON)

ORDER

AND NOW, THIS 22nd DAY OF FEBRUARY, 2011, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 294) is **ADOPTED**;
2. The motion for summary judgment filed by Defendant Dr. Ronald Long (Doc. 252) is **GRANTED**;
3. Plaintiff's motion to dismiss (Doc. 282) Defendant Long's reply is **DISMISSED** as moot;
4. The case is **REMANDED** to the Magistrate Judge for further proceedings; and
5. Any appeal will be deemed frivolous, lacking merit, and not taken in good faith.



United States District Judge